

NEPA COMMENTS

I have reviewed the above-referenced draft Environmental Assessment (EA) with respect to its sufficiency in meeting the requirements under the National Environmental Policy Act (NEPA). The federal action requiring review is the NOAA National Marine Fisheries Service's two proposed revisions to the Pacific Fishery Management Council Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). One revision would establish a capacity goal and permit transferability program for the CPS limited entry fleet; the other discusses the need for establishing a maximum sustainable yield (MSY) for market squid. Based on my review, I offer the following comments.

I. Limited Entry Fleet Capacity Management

1. Section 2.0, Alternatives Including the Proposed Action, p. 4.

In general, the way that "alternatives," "options," and eventually, "scenarios" are presented and intermingled in the EA is confusing for the reader. For the purposes of NEPA, we would suggest that alternatives and scenarios are ultimately the same thing, since any real alternative for the limited entry fleet is a combination of options. Therefore, while it is helpful for Section 2.0 to contain a full description of the options since the alternatives/scenarios are made up of different combinations of options, there is a difference between options and alternatives, particularly when it comes to section 4.0 and determining the environmental consequences of the proposed alternatives. In addition to presenting the environmental impacts of each of the options, we suggest that 1) the scenarios be properly referred to as alternatives and described in Section 2.0 as the no action and preferred alternatives currently are; and 2) in section 4.0, the cumulative impacts of the options should be discussed under each of the alternatives/scenarios as has been done for the proposed action (preferred alternative) on pages 17-22 (this would avoid the redundancy of including scenarios 1 and 5, for which the impacts have already been discussed earlier in the section).

2. Section 4.1.1, Impacts of No Action (the Status Quo), p17.

In addition to addressing the impacts of the no capacity goal, this section should also indicate that it is discussing the impacts of not revising the criteria for conditions for transfer of existing permits. The section should also discuss the impacts associated with not including procedures for issuing new limited entry permits, which are mentioned as part of the alternative on page 4.

3. Section 4.1.2.3 C, Adjusting Permit Transferability to Maintain the Capacity Goal, p. 21.

At the end of the paragraph, please explain specifically what the effect of adjusting permit transferability would be on the efficiency of harvesting operations in alternative fisheries, as well as the indirect effect on consumer and producer benefits associated with fishing opportunities for CPS finfish vessels. This information should be provided in each section where these statements are made, e.g., page 25 at the top of the page; page 27 at the bottom of the page, etc.

4. Section 4.1.4, Linking Capacity Goal and Permit Transferability Alternatives to Evaluate Possible Management Scenarios, Scenario 5, p. 27.

Scenario 5, which is identified as the Preferred Alternative, should also include a discussion of the effects of Option D.2, Procedures for Issuing New Limited Entry Permits, since it is an essential part of the preferred alternative. As discussed above, we consider the evaluation of possible management scenarios to be the comparison of the actual limited entry fleet capacity NEPA management alternatives. For this reason, we recommend providing a chart comparing the scenarios/alternatives and their environmental impacts.

II. Market Squid Maximum Sustainable Yield (MSY) Control Rule

5. Based on the information provided in the EA, we question whether the proposed amendment for establishing an MSY proxy for market squid meets the purpose or need as stated in the EA. The proposed action is specifically to establish an MSY for market squid in order to bring the CPS FMP into compliance with Magnuson–Stevens Act, and to provide a means to minimize the likelihood of overfishing. However, none of the three action alternatives actually accomplishes this purpose. Instead, they discuss setting an MSY proxy based on three different data/information sets. The method for selecting the MSY, rather than the actual selection of an MSY is the action being analyzed in this EA. As stated on page 3 in section 1.4,

Any method chosen for setting market squid MSY would not have direct impacts on the resource. Further, at this time squid are not an actively managed species, so MSY estimates are only used to monitor their status. The analysis of management alternatives, therefore, focuses on the reliability of different approaches for estimating biomass and MSY.

This is further demonstrated by a review of the discussion of the alternatives on pages 28 - 31. The document needs to be clear. Is the proposed action to identify a method for establishing an MSY proxy for market squid, or to actually establish an MSY proxy? If it is the PFMC's intent to set or establish an MSY, then the EA should compare the no action alternative with real MSY figures that are based on numbers already developed by which ever method has been selected by the PFMC. On page 31, the document mentions support for an annual landings cap on the total harvest of squid that has recently been proposed by the State of California. Is this figure the actual MSY? One of the major purposes of NEPA is to inform of the public of federal actions. Once an MSY figure has been selected based on egg escapement monitoring method, will the public then be given the opportunity to comment on the effects of that figure and what it will mean to the various vessels that fish for squid?

III. General Comments

6. Since this document is an EA, we recommend renaming the sections that are specifically required elements under NEPA, as follows:

Section 1.2	Purpose: Establishing a Capacity Goal and Related Limited Entry Measures;
Section 1.2.1	Need: Problems for Resolution
Section 1.3	Purpose: Establishing an MSY Proxy for Market Squid
Section 1.3.1	Need: Problems for Resolution

7. Cumulative Impacts.

Both the limited entry fleet capacity management and market squid MSY control rule sections need to include a discussion of the cumulative impacts associated with the proposed action.

8. 6.3, Coastal Zone Management Act, p.39.

Please remove the word “directly” from the second line of the Coastal Zone Management Act (CZMA) paragraph regarding federal activities that affect the coastal zone. The standard under the CZMA is that Federal activities simply must be affecting the coastal zone; it does not have to be a “direct” affect. The specific wording is:

Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management

programs. §1456 307(c)(1)(A)

9. Integration of Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, In the NOAA Decisionmaking Process.

Within Section 6.0, please include a discussion of E.O. 12898, Environmental Justice. E.O. 12898 requires agencies to analyze the effects of their actions on low-income and minority populations. The consideration of E.O. 12898 should be specifically included in the NEPA documentation for decisionmaking purposes. Unlike NEPA, the trigger for analysis under E.O. 12898 is not limited to actions that are major or significant and Federal agencies are mandated by E.O. 12898 to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Thus when applicable, environmental justice should be addressed in activities that require NEPA analysis.

10. Appendix A, Conclusions or Finding of No Significant Impact. At a minimum, the FONSI should include a one-paragraph summary of the document and its findings. However, we encourage FONSI determinations to address each of the nine criteria referenced in our NOAA Administrative Order 216-6 for fishery actions. Below is an example from another EA to help.

EXAMPLE:

Finding of No Significant Impact (FONSI)

National Oceanic and Atmospheric Administration Order (NAO) 216-6 (revised May 20, 1999) provides nine criteria for determining the significance of the impacts of a proposed action. These criteria are discussed below:

1. Can the proposed action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?

The proposed action is not expected to jeopardize the sustainability of any target species that may be affected by the action because the experimental fishery is of limited scope (only involving 6 vessels) and duration (lasting only 2 months). Although the Atlantic halibut resource is considered to be overfished, the biological information to be collected from this experimental fishery is essential for the long-term sustainable management of this fishery resource.

2. Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in FMPs?

The proposed action is not expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in the FMP. The area affected by this action has been identified as EFH for species managed by the Northeast Multispecies; Monkfish; Summer Flounder, Scup, and Black Sea Bass; Spiny Dogfish; Atlantic Mackerel, Squid, and Butterfish; Atlantic Herring; Atlantic Billfish; and Atlantic Tunas, Swordfish and Sharks Fishery Management Plans. This experimental fishery will be using longline and tub trawl gear exclusively. This gear type is not associated with adverse impacts to benthic habitat. Therefore, this experimental fishery is not expected to have an adverse impact on EFH.

3. Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

The proposed action is not expected to have a substantial adverse impact on public health or safety. The proposed experimental fishery is of limited scope and duration and involves only the collection of biological

information on Atlantic halibut to be used in the long term management of this fishery resource.

4. Can the proposed action be reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?

The proposed action can be reasonably expected to not have an adverse impact on endangered or threatened species, marine mammals, or critical habitat for these species. As stated in Section 4.6 of the EA, the activities to be conducted under the experimental fishery are within the scope of the Multispecies FMP and do not change the basis for the determinations made in previous consultations.

5. Can the proposed action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

The proposed action is not expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species. As stated in Section 4.1, bycatch of non-target species in this experimental fishery is expected to be minimal. However as discussed in Section 4.4, there may be some cumulative impacts on Atlantic halibut, the target species, but these impacts are not expected to be substantial.

6. Can the proposed action be reasonably expected to jeopardize the sustainability of any non-target species?

The proposed action is not expected to jeopardize the sustainability of any non-target species. As discussed in Section 4.0, the bycatch of non-target species in this experimental fishery is expected to be minimal, based on the results of the 2000 and 2001 experimental fisheries. Furthermore, this experimental fishery is targeting Atlantic halibut with highly selective fishing gear.

7. Can the proposed action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area because the experimental fishery is targeting Atlantic halibut with highly selective fishing gear, thus minimizing bycatch of non-target species, and because the experiment is of limited scope and duration.

8. Are significant social or economic impacts interrelated with significant natural or physical environmental effects?

As discussed in Section 4.3 of this EA, the proposed action is not expected to result in significant social or economic impacts, or significant natural or physical environmental effects. Therefore, there are no significant social or economic impacts interrelated with significant natural or physical environmental impacts.

9. To what degree are the effects on the quality of the human environment expected to be highly controversial?

The measures contained in this action are not expected to be highly controversial. This experimental fishery proposes to collect much needed biological information on an overfished species to be used in the long-term sustainable management of this fishery resource. However, in light of recent a Federal court decision involving the multispecies fishery (Conservation Law

Foundation et al. v. Evans), this action may be somewhat controversial since it temporarily increases effort on a groundfish stock that is considered to be overfished.

FONSI Statement

In view of the analysis presented in this document and in the EIS for the FMP, the proposed experimental fishery to collect biological and ecological information on Atlantic halibut will not significantly affect the quality of the human environment, with specific reference to the criteria contained in Section 6.02 of NOAA Administrative Order NAO 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act (NEPA). Accordingly, the preparation of a Supplemental Environmental Impact Statement for the proposed action is not necessary.

